

THE HON'BLE SRI JUSTICE A.V. SESA SAI
&
THE HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI
PRATAPA

W.A. No. 171 OF 2023

JUDGMENT: *(per A.V. Sesa Sai, J)*

Heard Sri Solomon Raju Manchala, learned Standing Counsel for the appellants and Sri M. Pitchaiah, learned counsel for the respondent, apart from perusing the material on record.

The challenge in the present Writ Appeal, preferred under Clause 15 of Letters Patent, is to the order dated 29.03.2022 passed by the learned Single Judge in W.P.No.11362 of 2019. The respondent herein instituted the said Writ Petition, assailing the action of the respondents-appellants herein, in not granting two (02) Special Grade Increments to the writ petitioner-respondent herein on completion of 12 years and 20 years of service respectively by the writ petitioner-respondent herein and failure to credit 300 earned leave during the period from 2002 to 2012 to the leave account of the writ petitioner-respondent herein. The learned Single Judge, by way of the order impugned in the present Writ Appeal, allowed the Writ Petition, with a direction to the

respondents-appellants herein to sanction Special Grade Increments to the writ petitioner-respondent herein and re-fix the pay of the writ petitioner-respondent herein and to pay the incremental arrears, if any, under the Special Grade with interest @ 12% per annum, within a period of three (03) months from the date of receipt of copy of the order.

According to the learned counsel for the writ appellants, the order passed by the learned Single Judge is highly erroneous, contrary to law and also to the Circular instructions issued by the appellant-Corporation *vide* Circular No.PD-04/2011, dated 12.01.2011. In elaboration, it is contended by the learned counsel that in order to get eligibility under the aforesaid Circular issued by the appellant-Corporation, one must have active service in the Organization. It is further submitted that right from the year 2002 till the writ petitioner-respondent herein was reinstated into service in the year 2012, the writ petitioner-respondent herein was out of service, as such the said period, by any stretch of imagination, cannot be regarded as active service spent on duty. It is further submitted by the learned counsel

that the learned Single Judge did not assign any reasons for award of interest @ 12% per annum.

On the contrary, Sri M. Pitchaiah, learned counsel for the writ petitioner-respondent herein, strongly resisting the Writ Appeal, contends that there is absolutely no illegality nor there exists any infirmity in the order passed by the learned Single Judge and in the absence of the same, the questioned order is not amenable to any correction under Clause 15 of the Letters Patent. It is further submitted by the learned counsel that in view of the settled law as laid down by the Composite High Court of Andhra Pradesh in the case of ***M.D. Rahamatullah Vs., Depot Manager, APSRTC***¹ the contentions that are sought to be pressed into service by the learned counsel for the respondents-appellants herein, deserve no consideration.

In the above background, now the issues that emerge for consideration of this Court under Clause 15 of the Letters Patent are as follows:

1. Whether the order passed by the learned Single Judge which is impugned in the present Writ Appeal is sustainable and tenable?

¹ 1999(4) ALT 515

2. Whether the questioned order warrants any interference of this Court?

The information available before this Court discloses that the writ petitioner-respondent herein joined in the service of the appellant-Corporation initially as a Cleaner on 21.11.1997 and worked in the said capacity till 22.08.2002. It is also not in dispute that on certain allegations, he was suspended from service on 22.08.2002 and after holding a detailed enquiry, the services of the writ petitioner-respondent herein were dispensed with. After unsuccessfully challenging the said order of removal dated 26.12.2002 in I.D.No.2 of 2004 before the Industrial Tribunal-cum-Labour Court, the writ petitioner-respondent herein approached this Court by way of filing W.P.No.29552 of 2011. It is also not in dispute that the said Writ Petition came to be allowed by the Composite High Court of Andhra Pradesh *vide* order dated 26.03.2012. By way of the aforesaid order, the Composite High Court of Andhra Pradesh, allowed the Writ Petition, setting aside the Award passed by the Industrial Tribunal-cum-Labour Court and consequently had set aside the order of removal and directed the APSRTC to reinstate the writ

petitioner-respondent herein into service with continuity of service and all other attendant benefits, except back wages. It is also not in controversy that in terms of the aforesaid order, the writ petitioner-respondent herein was reinstated into service on 07.08.2012. Subsequently, Writ Appeal No.841 of 2012 filed by the respondents-appellants herein against the order passed by the learned Single Judge in W.P.No.29552 of 2011 came to be dismissed by the Composite High Court of Andhra Pradesh.

The present Writ Petition No.11362 of 2019 came to be instituted by the writ petitioner-respondent herein, seeking the relief as indicated supra. The appellant-Corporation contested the Writ Petition by filing counter-affidavit. The learned Single Judge allowed the said Writ Petition and granted reliefs as indicated above. The principal contentions advanced by the learned Standing Counsel for the appellant-Corporation are – (i) since the writ petitioner-respondent herein did not put-in actual active service during the relevant period, the writ petitioner-respondent herein is not entitled for any relief in terms of Circular, dated 12.01.2011 and (ii) having regard to the abnormal and unexplained delay in

approaching this Court, the learned Single Judge ought not to have granted interest @ 12% per annum.

In this context, it would be appropriate and apposite to refer to the Circular dated 12.01.2011:

“ANDHRA PRADESH STATE ROAD TRANSPORT
CORPORATION

O/o the Managing Director,
Bus Bhavan, Hyderabad-624.

No: P2/544(04)/2010-PO-IV

CIRCULAR NO. PD-04 /2011, DATED 12.01.2011

Sub: **PAY** ♦ Creation of 20 Years Special Grades to Class.II, III & IV employees on completion of 20 years of service ♦ Instructions ♦ Issued.

Ref.: 1. Memorandum of Settlement U/s 12(3) of ID ACT, 1947 reached between Management and APSRTC NMU dated 22.01.2010.
2. [Circular No.PD-04/2010, dated 10.02.2010.](#)

It was agreed to modify the existing Scheme of Special Grades to all categories of employees, giving first advancement on completion of 12 years of service and second advancement on completion of 20 years of service as on 31st July 2009 and onwards in the same cadre, vide item No.12.2, of Memorandum of Settlements U/s. 12(3) I.D.Act, 1947 reached between the Management and APSRTC National Mazdoor Union on 22.01.2010.

Accordingly, instructions were issued through Cir.No.PD-4/2010, dt.10.2.2010 on implementation of RPS 2009 duly communicating the normal and corresponding 12 years Special Grade Revised Scales of Pay 2009 on completion of 12 years of service as enumerated at Annexure-IV. It was stipulated therein that regarding advancement on completion of 20 years of service as such in the same category, separate instructions will be issued.

To regulate placement on higher scale of all the employees who were given stagnation grade on

completion of 20 years as on 31st July 2009 and onwards in the same cadre, the following administrative instructions are issued:

- 1. The employees who have put in more than twenty (20) years of service in the same category of post and who were enjoying the stagnation grade on completion of 12 years shall be placed on to the corresponding scale as indicated in Annexure. (Copy enclosed).*
- 2. Service including the service put in under Regulation 17 or Regulation 30 (but not on casual basis) shall be counted for computing twenty (20) years of service in the same post.*
- 3. While computing 20 years of service for stagnation grade the LWP/Absenteeism and Extra-ordinary leave period which counts for postponing of normal annual increments(s) in the particular post shall be deducted from the total service i.e., the active service spent on duty including leave with allowance shall only be taken into account for the purpose of qualifying service.*
- 4. The employees, who have completed Twenty (20) or more years of service in the category as such, as on 31st July of that year, will be placed on the 20 Years Special Grades on 1st August of that year. However, their duties and responsibilities shall remain unchanged even after their placement on Special Grades.*
- 5. While fixing the pay in Special Grade, one additional notional increment in the lower (existing) grade be given and then fixed at appropriate stage in the 20 years Special Grade i.e. in the same stage if stage exists or in the stage next above if there is no such stage.*
- 6. The employees who are allowed 20 years Special Grade shall be permitted to exercise their option to come on to 20 years Special Grade w.e.f. 1st August of the year or from the date of their annual increment whichever is beneficial to them. The next annual increment will however be accrued after completion of one year from the date of fixation of pay in 20 years Special Grade subject to leave adjustments/punishments, if any.*
- 7. If option is exercised from date of annual increment, in existing scale, pay in 20 years Special Grade shall be fixed by allowing normal annual increment and one*

notional increment in the lower (i.e., existing) Grade and then fixing at appropriate stage in the 20 years Special Grade i.e. in the same stage if stage exists or in the stage next above if there is no such stage.

8. *The employees who are placed on 20 years Special Grades are entitled for promotion to higher post in the normal course, based on APSRTC Employees (Recruitment) Regulations, 1966. However, the pay of such employees on promotion to any higher post/higher grade from 20 years Special Grade, be fixed in the promotion scale in the next stage and they are not eligible for benefit of notional increment*
9. *If an employee who is eligible for 20 years Special Grade is on Extraordinary Leave or under suspension as on 31st July of that year, he will be entitled to the Special Grade from the date of his / her resumption to duty.*
10. *Out of twenty (20) years of service in the present post as envisaged, if any Employee is reverted to his / her former post for a specified period (say 6 months or one year) and there after restored to his / her post then existing, it cannot be construed as having rendered twenty (20) years of service. The service put in on reversion shall have to be deducted to arrive at 20 years of service or more in such cases.*
11. *In case of employees undergoing punishment of deferment of increment or reduction in pay on 31st July of that particular year, their pay will be fixed in the 20 years Special Grade based on the pay that he would have drawn had there been no punishment. The monetary benefit accruing there of shall be allowed from the next date on completion of the punishment.*
12. *Every year the Authority specified shall prepare a list of employees who have completed twenty (20) years of service as on 31 July and shall issue orders placing the eligible employees on 20 years Special Grades w.e.f. 1st August of that year. No review will be done in the middle of the year.*
13. *The employees who are promoted to a higher post, but refused/rejected or reverted at their own request, shall not be considered for sanction of special grade.*

14. The authorities competent, while issuing promotion/special grade sanctioning orders, shall invariably mention the clause with regard to exercising option, for fixation of pay within 30 days from the date of assuming responsibilities/date of issuance of special grade orders.

Authorities competent to place the above categories of employees in special grades are:-

- 1) ED of the Zone, in the case of employees working in NOUs of the zone other than workshops.
- 2) RM of the region, in the case of employees working in the region including dispensaries.
- 3) Dy. CPM(A)/HO, in the case of employees working in Head Office Units.
- 4) WM of the workshop, in the case of employees working in workshops.

Sd/ B.PRASADA RAO
**VICE CHAIRMAN &
 MANAGING DIRECTOR"**

While referring to the language employed in paragraph 3 of the aforesaid Circular, the learned Standing Counsel submits that since the writ petitioner-respondent herein did not comply with the contingency of putting in active service, he would not be entitled for the benefits arising out of the said Circular. In this context, it would be appropriate to refer to the judgment cited by the learned counsel for the writ petitioner-respondent herein. In **M.D. Rahamatullah's** case (referred to supra), the Composite High Court of Andhra Pradesh, by placing reliance on the judgment of the Division

Bench of the composite High Court of Andhra Pradesh as confirmed by the Hon'ble Supreme Court in S.L.P.No.2009 of 1996, categorically held that whenever a Labour Court directs reinstatement with continuity of service but without backwages, the employee concerned will be entitled for all the benefits flowing from continuity of service and only restriction is upon payment of backwages which is imposed by the Labour Court .

In the considered opinion of this Court, the principle laid down in the aforesaid judgment rendered by the Composite High Court of Andhra Pradesh, is squarely applicable to the case on hand. It is also required to be noted that W.P.No.29552 of 2011 was allowed by the Composite High Court of Andhra Pradesh on 26.03.2012 and W.A.No.841 of 2012 came to be dismissed by the Division Bench of the composite High Court of Andhra Pradesh, as long back as on 24.06.2013. Therefore, admittedly there was a delay of six (06) years in approaching this Court by way of filing W.P.No.11362 of 2019 and admittedly, there is no explanation for the said delay. Therefore, we are inclined to

scale down the interest from 12% per annum to 6% per annum.

For the aforesaid reasons, the Writ Appeal is partly allowed only to the extent of rate of interest and the same is scaled down to 6% per annum. It is also made clear that the other directions in the impugned order shall remain intact. It is also made clear that if any payments are already made to the writ petitioner-respondent herein under the present heads, the same shall be given credit to. No order as to costs.

Miscellaneous petitions, if any, pending in this case, shall stand closed.

A.V. SESA SAI, J

VENKATA JYOTHIRMAI PRATAPA, J

Date: 30.01.2023

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THE HON'BLE SRI JUSTICE A.V. SESA SAI
&
THE HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI
PRATAPA

W.A. No.171 OF 2023

(per A.V. Sesa Sai, J)

Date:30.01.2023

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